-12 = 15

## IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA 00 SEP 27 Am 9: 52 N.D. OF ALTHAMA SUB. WESTERN DIVISION NATIONWIDE MUTUAL INSURANCE COMPANY, SEP 282000 Plaintiff, CIVIL ACTION NUMBER VS. GILBERT AND SUZANNE SENTELL 99-C-0044-W d/b/a SENTELL SURVEYING AND ENGINEERING SERVICES, and RAY SAUNDERS, Defendants.

## **MEMORANDUM OPINION**

The parties have filed cross-motions for summary judgment. Based on the discussion which follows, the Court will grant the Plaintiff's motion.

Ι

Plaintiff Nationwide Mutual Insurance Company ("Nationwide") seeks summary judgment on its claim that it is not obligated to defend or indemnify Defendants Gilbert and Suzanne Sentell under the business owners liability policy issued to them, doing business as Sentell Surveying and Engineering Services. It also seeks summary judgment on Defendants' counterclaim alleging breach of contract and bad faith.

The business owners liability policy issued by Nationwide to the Sentells

contains a "professional services" exclusion. Under this exclusion, any "property damage'...due to the rendering or failure to render any professional services" is not covered by the policy. Defendants are engineers and surveyors. Defendant Ray Saunders is employed by Sentell Surveying and Engineering Services.

Andrew Griffin and Shirley Eatman have filed a lawsuit against the Sentells in the Circuit Court of Greene County, Alabama alleging professional negligence, fraudulent misrepresentation, suppression and breach of contract. This underlying lawsuit arises out of a contract between Griffin and Eatman under which the Sentells were engaged to prepare the plans and blueprints to convert a private residence into a day car center. Allegedly, after the private residence was converted according to the blueprints, it failed to pass local building inspection due to a mistake in the design of the facility. After the lawsuit was filed, the Sentells gave Nationwide the requisite notice. Nationwide denied coverage and filed the present action seeking a declaratory judgment that it has no obligation to defend or indemnify.

II

Clearly, all the claims in the underlying lawsuit relate to the Sentells' rendition of professional services. Therefore, the exclusion applies, and summary judgment is appropriate for Nationwide.

As there is no contract between Nationwide and Defendant Ray Saunders, there is obviously no duty to defend and/or indemnify him in the underlying lawsuit.

Based on the undisputed facts, the Sentells are not entitled to judgment on their counterclaim of breach of contract and bad faith.

By separate Order, summary judgment will be granted.

DONE this 264 day of September, 2000.

UNITED STATES DISTRICT JUDGE U. W. CLEMON